Mr. K. Narayana Menon *(Mulakunnathukavu):* Are the Government aware of the repeated incidents of fire almost every year in Kunnamkulam?

Mr. B. V. K. Menon *(Joint Secretary to Government):* As early as possible we will try to have a lorry there. But I do not think a water lorry there is absolutely necessary.

Mr. C. V. Iyyu *(Kunnamkulam):* It is.

Mr. B. V. K. Menon *(Joint Secretary to Government):* It may be useful everywhere also. It was taken to a more useful place.

ACCUSED IN C. C. 447/18—TALAPPALLI MAGISTRATE'S COURT

246. Mr. K. Narayana Menon *(Mulakunnathukavu):* Will Government be pleased to state.—

(*a*) whether after answering question No. 12 at the last sitting of the Council the Government had occasion to enquire or know about the physique of the accused in C. C. 447/18 Talappalli Magistrate's Court;

(*b*) whether it is a fact or not that the lady, *viz.*, the accused concerned was having fits and hemmorage—actual oozing of pumped up blood from the system through the mouth—in the presence of the Sub-Magistrate in open Court in the Court room and whether the fact is not noted by the Magistrate;

(*c*) whether it is possible to feign an illness in the form adverted to in question (*b*)?

Khan Sahib Y. Muhammed Roshan Sahib Bahadur *(Commissioner of Police):*

(*a*) Yes.

(*b*) No.

(*c*) The question does not arise in view of answer to sub-division (*b*).

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* May I know whether the Second Class Magistrate has been addressed on the question contained in sub-division (*b*)?

Khan Sahib Y. Muhammad Roshan Sahib Bahadur *(Commissioner of Police):* Yes. He was enquired of and he has stated that in his presence she had not been behaving in the manner mentioned in the question, and no record has been made in the proceedings.

Announcement regarding election of members to the Standing Finance Committee.

Mr. President: I have to announce that valid nominations for election to the Standing Finance Committee have been received as follows.—

Mr. P. Kumaran Ezhuthassan	Proposed by Mrs. Thamkamma N. Menon and seconded by Mr. P. Narayana Menon.
„ P. P. Devassy	Proposed by Mr. Kunhirama Menon and seconded by Mr. M. Krishna Menon.
„ Ephraim Ouseph	Proposed by Mr. K. R. Achuthan and seconded by Mr. C. V. Iyyu.
Mrs. K. Joshua	Proposed by Mr. V. K. Kutty and seconded by Mr. C. V. Iyyu.
Mr. V. K. Bhaskara Menon	Proposed by Mr. P. Kumaran Ezhuthassan and seconded by Mr. K. Narayana Menon.

The election will be conducted by the Secretary to Government at 5 this afternoon.

LEGISLATIVE BUSINESS—GOVERNMENT BILLS

The Cochin Municipal Act (Amendment) Bill

Mr. M. Sivarama Menon *(Advocate-General):* I beg to move that the Cochin Municipal Act (Amendment) Bill be taken up and finally passed.

Mr. B. V. K. Menon *(Joint Secretary to Government):* I second it.

Motion put and carried

The Cochin Verumpattamdars Act (Amendment) Bill

Mr. A. V. Moothedan *(Chalakkudi):* Mr. President, Sir, I have complaint only against one amendment, that is, clause 3 of the Bill. Clause 3 is like this.—"'For clause (*b*) of section 3 of the Act, the following shall be and shall always be deemed to have been substituted, namely,—

(*b*) leases granted by Official Receivers or Receivers appointed by courts or by mortgagees or by any person holding under or deriving title from such Receivers or mortgagees'."

Now, section 3 of the Act says.—"This Act shall not apply to lands owned by Government; or (*b*) leases granted by a usufructuary mortgagee or by any person holding under or deriving interest from him,

"

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Regarding the other provisions of the Bill I have no objection at all. The first thing is leases granted by an Official Receiver or Receiver. These officers are appointed by courts. There are similarly official Liquidators, Official Assignees and so on. If we go on enumerating all these officers, there will be no end. Therefore, what I say is that it can be stated in a general way—"leases granted by officers appointed by courts". That will cover all cases, that is, lease granted by all officers of the court. I have given an amendment to that effect. That will be more general and will cover all cases. It is only a verbal amendment, and I was able to give notice only this morning. If the President is pleased to allow me permission to move it.....

Mr. President: We are now considering Mr. Narayana Menon's amendment to that clause. I think that should be put to vote before considering any others.

Mr. A. V. Moothedan *(Chalakkuudi)*: Regarding the amendment proposed by Mr. Narayana Menon, the proviso to this clause (3) is as follows.—

> "Provided that this Act shall apply to a lease granted by the Official Receiver, or Receiver if it is a renewal or the result of an attornment of a lease held by a verumpattamdar who would have acquired fixity of tenure under section 4 at the commencement of this Act."

My first submission is that will create more complication than is at first seen. Now, what is the hardship in passing the amendment moved by the Advocate-General? Why this amendment by the Hon'ble Member for Mulakunnathukavu is necessary. I do not understand. An illustration as pointed out by the Advocate General that there was partition suit and receivers were appointed and tenants were executing renewals. Now in a partition suit, tenants are not parties, they need not be parties and their rights are not affected; and if at all a receiver is appointed, the receiver can collect rents from tenants. In courts here when receivers are appointed, they give only on vara kychits. Whatever it be even in this case, I think it is only an imaginery case. There is no actual hardship, because in a partition suit tenants are not necessary parties and the receiver has no right to remove the tenant from possession, and there will be no question of renewal. It is stated that there is renewal in favour of the tenants in partition suit. How can there be a renewal? Renewal means there must be two parties, and there should be a lease deed. Now if a Receiver is appointed the court becomes the custodian of the property and these parties are different. It is entirely a new transaction.

What is the result of the attornment of the lease? What is the meaning of "attornment". The member might have meant that the tenant must have surrendered the holding to the receiver. Order 30 of the Civil Procedure Code clause 2, says.—"nothing in this rule shall authorise the Court to remove from possession or custody of property of any person whom any party to the suit has not a present right so to remove".
Why should there be an attornment at all? If the court has no power to remove a tenat, why sould there be an attornment? Therefore, I cannot understand these things.

Then there is another thing —"who would have acquired fixity of tenure under section 4 a' the commencement of this Act". Section 4 of the Act is only a very general way of statingt There are other sections, section 8. Under section 8, conditions are prescribed for granting fixity of tenure. Without any reference to section, fixity of tenure is conferred by section 4. It is meaningless. Section 8 is the most important section in the Act. It reads as follows.—(*a*) that he has wilfully denied the title of, jenmi etc., etc., (*b*) that he has intentionally and wilfully committed such acts etc., etc., (*c*) that he has not paid the pattam due in respect of the holding etc., etc., (*d*) that he has not paid within six months from the commencement of this Act the entire arrears of pattam, if any, due in respect of the holding (at the commencemcnt of this Act). Now, without reference to section 8 by refering to section 4 I do not know what would be the crnsequences that would follow. In such cases, section 8 will not have operation. Section 8 only stated in a general way so far as fixity is concerned. But there are other operative sections which are more important than section 4. Without any reference to these sections by making reference like this in a proviso, what will be the consequences that would follow, I do not know. It would create unnecessary litigation and troubles.

The High Court has pointed out that if receivers are not brought within the Act, there will be trouble. First of all the lease granted by the court receiver is not a lease at all. There is no landlord. When a property is in the possession of a receiver, the property is in the possession of the court, not a landlord or jenmy or tenant. The court is a court. It is a corporation for administering justice, and when a receiver is appointed, the court has to discharge the receiver So, what I say is there is no necessity for a safeguard like this for helping the receiver's case The court has got ample powers under the inherent power, if any such trouble occur. What

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ever it may be, the High Court wanted it and the Advocate-General has brought an amendment. This amendment by the Hon'ble Member for Mulakunnathukavu is not necessary and I have to oppose it.

Mr. M. Sivarama Menon *(Advocate-General):* The points raised by the Hon'ble Member for Chalakkudi were very well considered at the time of deciding the question as to whether I should accept the amendment put forward by Mr. Narayana Menon. The shape of the original amendment was changed after discussion and the amendment that has been tabled by the Hon'ble Member is really an agreed amendment so far as myself and the mover are concerned. I have now to explain the necessity of having that proviso. Before the enactment of the Verumpattamdars Act and long prior to the contemplation of such Act, there might have been persons who might have been holding property under leases. At that time, they had no fixity of tenure. Suppose a partition suit in joint family is instituted, and a receiver is appointed. The original person who had executed the lease deed might have died and his heirs may be in possession of the property as successors. The receiver appointed for the purpose of the proper administration of the estate might take a fresh lease deed from those persons in continuation of the original lease deed. Such leases granted by Official Reeceivers should be given fixity. The purpose of the amendment is only to have a safeguard in rspect of such leases. That is, a tenant who would have been entitled to fixity but for the appointment of the receiver should not be divested of that right simply because a receiver happens to be appointed and the lease deed happens to be renewed. It has been brought to my notice that in a partition suit in Trichur, the receiver has taken renewals of lease deeds from very old tenants, in continuation of the original tenancy. Now, the amendment introduced by the Government may lead to a doubt as to whether renewal of a lease to or by a receiver will divest the tenant of that permanency which he would otherwise have enjoyed. It is to remove that doubt that the proviso has been introduced. "Provided that this Act shall apply to a lease granted by the Official Receiver or Receiver, if it is a renewal or the result of an attornment of a lease held by a verumpattamdar who would have acquired fixity of tenure under section 4 at the commencement of this Act." That is, a person who in the ordinary course of things would have acquired fixity of tenure under the Cochin Verumpattamdars Act should not be divested of that right simply because a receiver appointed to look after the estate has renewed an old lease. I think such a safeguard is absolutely necessary. This amendment is tabled in view of the fact that certain specific instances of this nature have been brought to my notice. Moreover, this is not going to injure anyone. It applies only with regard to transactions which have occurred prior to the passing of this Act. Therefore, I readily accepted the amendment tabled by the Hon'ble Memher for Mulakunnathukavu after discussion. Another argument raised against it by the Hon'ble Member for Chalakkudi is that the lease granted by court is no lease at all. The High Court has already held in the C.M.P. case that it is doubtful under the present provision whether leases granted by the receiver are entitled to fixity. Therefore, Government thought it wise that since the High Court has given an opinion it is better to come forward with such an amendment.

Then the Hon'ble Member for Chalakkudi was saying that lessees cannot be parties to partition suits. I readily agree. But it is the estate that is involved in the partition suit, and if the estate is entitled to collect moneys from the lessees, the receiver is entitled to collect the rent from the lessees. Why should the House be against this principle that those who are entitled to fixity prior to the partition suit should also have fixity and that it should not be lost on account of the partition suit. I think this is a proviso which is very reasonable and acceptable.

One other point that was raised in reference to this amendment is regarding the liquidators and so on. I shall come to that. I think that the present amendment is only to safeguard the interests of those persons who would have fixity but for the appointment of receiver.

Mr. K. Narayana Menon *(Mulakunnathukavu):* All the points I have to answer have been answered by the Hon'ble Law Member. I have only to add one more point. The civil courts intervene and take the property through a receiver only on the basis that the *status quo ante* is preserved until the disposal of the suit. When the suits terminate, the status quo has to be restored, and the receiver has to be discharged. So, any lease granted in the interim by the receiver should not affect the rights of those who have already vested rights in that property at the time of the institution of the suit. My amendment is only to that effect. All the other points have been answered by the Hon'ble Member for law and I have nothing more to add.

Amendment put and carried

Mr. President: Mr. Moothedan had stated something about further amendments.

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Mr. A. V. Moothedan *(Chalakkudi):* If the Advocate-General has no objection in accepting the amendment, I will move it. If he is opposing that amendment, I do not want to move.

Mr. President: How is the amendment which you wish to move consistent with the amendment which has just been made?

Mr. A. V. Moothedan *(Chalakkudi):* So many amendments are necessary for so many sections.

Mr. M. Sivarama Menon *(Advocate-General):* The amendment tabled by Mr. Moothedan will practically result in recasting of the sections. One suggestion of the Hon'ble Member is acceptable. I shall introduce the amendment at the third reading of the Bill to take in "Official Liquidators" also.

Mr. President: Does Mr. Moothedan wish to press his amendment or not?

Mr. A. V. Moothedan *(Chalakkudi):* I do not press that amendment, because 3 consequential amendments would be necessary. I am referring to the 1st amendment, that is, wherever the words "Official Receiver" and "receiver" occur, for that substitute the words.....

Mr. President: The Council has just voted the amendment which implies that those words are in the clause. Therefore, this amendment which you are now tabling is inconsistent with the amendment which the House has passed. Therefore, it is not in order.

Mr. A. V. Moothedan *(Chalakkudi):* What I suggest is for the words "Official receivers or receivers appointed by court", simply state "Officers appointed by court". May I, with your permission suggest one thing? In the amendment tabled by Mr. Narayana Menon, there seems to be an inadvertent omission, that is the clause of the amending Bill as brought forward by Government contains "leases granted by Official Receivers or Receivers appointed by courts". In its place "leases granted by officers appointed by courts" may be substituted.

Mr. M. Sivarama Menon *(Advocate-General):* I answered that it is a proviso to the main section.

Clause 3 as amended put and carried

Mr. President: Mr. Narayana Menon has given notice of a new clause between clauses 3 and 4.

Mr. K. Narayana Menon *(Mulakunnathukavu):* I do not move those amendments.

Clause 4

Mr. K. Narayana Menon *(Mulakunnathukavu):* I understand that the section as it stands, as tabled by Government, will cover the amendment also and therefore I do not move the amendment.

Mr. President: Mr. Kumaran Ezhuthassan has given notice of an amendment to clause 4.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I do not move that amendment.

Clause 4 put and carried

Clause 5 put and carried

Title and Preamble put and carried

Clause 1 put and carried

Mr. M. Sivarama Menon *(Advocate-General):* I move that the Cochin Verumpattamdars Act (Amendment) Bill be taken up and finally passed day after tomorrow.

Mr. B. V. K. Menon *(Joint Secretary to Government):* I second it.

Motion put and carried

The Cochin Abkari Act (Amendment) Bill

Mr. C. J. Mathew *(Joint Secretary to Government):* Sir, I beg to move that the Cochin Abkari Act (Amendment) Bill be read in Council.

Mr. B. V. K. Menon *(Joint Secretary to Government):* I second it.

Mr. C. J. Mathew *(Joint Secretary to Government):* According to the existing provisions of the Act, Government have no authority to forfeit the kists deposited by persons who purchase in auction the right to sell toddy, arrack, etc. Such a provision is quite necessary for an effective working of the auction system. Then only purchasers will abide by the conditions laid down in the contract. In a recent decision of the High Court it was held a provision for forfeiture made in the rules was held to be *ultra vires* of the Act. With a view to make the rules *ultra vires*, it is necessary to amend the Act incorporating such a provision.

Motion put and carried

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